THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.27153 of 2005

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Dated:20.12.2005

Between:

Vishal Khurana S/o Sri Suresh Kumar Khurana
R/o Flat No. 212, A-Block, Express Apartments, Lakdikapool,

Hyderabad.

..... PETITIONER

AND

Municipal Corporation of Hyderabad, rep by Commissioner, Tank Bund,

Hyderabad.

.....RESPONDENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.27153 of 2005

ORDER:

The petitioner is a tenant of premises bearing No.8-2-293/82/A, Plot No.470-A, situated at Road No.36, Jubilee Hills, Hyderabad. He obtained the premises on lease from Smt.P.S.Vara Lakshmi allegedly under a rental agreement dated 25.02.2004 on a monthly rent of Rs.7,500/-, and Rs.5,000/- towards furniture and fixtures. The petitioner is running a Boutique in the name and style of M/s.Neha Boutique. When the landlady allegedly tried to interfere with the possession of the property, the petitioner filed a suit, being O.S.No.2146 of 2005 on the file of the Court of the IV Senior Civil Judge, City Civil Court, Hyderabad. The said Court granted *ad interim* injunction by an order dated 23.11.2005 in I.A.No.1126 of 2005.

The petitioner alleges that as the landlady could not evict the petitioner by reason of the injunction order, she approached the respondent-Corporation for demolishing the leased premises in the guise of road widening. Accordingly, the Municipal Corporation of Hyderabad (MCH) issued notice dated 22.09.2005 to the landlady requesting her consent to handover the affected portion of the site to an extent of 25 feet. Based on the said alleged consent, on 17.12.2005 the respondent-Corporation demolished the compound wall and also occupied the premises to an extent of 25 feet by duly demolishing a portion of the room on the southern side of the building. The petitioner alleges that the respondent-Corporation did not issue any notice to the tenant, nor the tenant gave any consent for handing over possession. It is further alleged that on 19.12.2005, the officials of the respondent-Corporation demolished the petitioner's premises to a further extent of 6 feet, though initially the premises to an extent of 25 feet was proposed for road widening. Apprehending further demolition and coercive steps by the respondent-Corporation, the present writ petition is filed.

The learned Counsel for the petitioner placed strong reliance on the decision of the Full Bench of this Court in **M/s.Ushodaya Publications v. Commissioner, Municipal Corporation of Hyderabad** and a decision rendered by me in **Srichand Rohra v. Commissioner, Municipal Corporation of Hyderabad** in support of the contention that whenever MCH requires the property for road widening or for any public purpose, the consent of the tenant has also to be acquired, and if such consent is not forthcoming, MCH has to follow the procedure under Section 147 of the Hyderabad Municipal Corporations Act, 1955 (for short 'the Act').

Opposing the writ petition, at the stage of admission itself, the learned Standing Counsel for the Municipal Corporation of Hyderabad submits that after obtaining the consent of the landlady, the property in occupation of the petitioner to an extent of 25 feet from the road margin was taken for road widening. She, however, denies that the officials of the respondent-Corporation further demolished the property under petitioner's occupation to an extent of 6 feet yesterday.

It has been repeatedly held by this Court in various decisions that whenever the property is required for any public purpose, the public authority has to necessarily follow the procedure contemplated under the law i.e., Land Acquisition Act, 1894. Section 146 of the Act enables the Commissioner to negotiate with the owners of the property whenever such property is required for any public purpose or for road widening. By reason of the decision of this Court in **M/s.Ushodaya Publications v. Commissioner, Municipal Corporation of Hyderabad** (supra), the consent of the landlady/landlord alone would not be sufficient compliance with Section 146 of the Act, and if the property is in occupation of a tenant, the consent of the tenant has to be necessarily obtained after giving a notice. In this case, there is no denial that the respondent-Corporation did not issue any notice to the tenant.

I n **Srichand Rohra v. Commissioner, Municipal Corporation of Hyderabad** (supra), this Court considered this aspect of the matter, observing thus.

> A reading of the said letter does not in any way indicate that there is any truth

in the submission made by the learned Counsel for the petitioners. What was sought to by issuing such letter is, a request was made to the landlords to give consent to handover advanced possession in the larger public interest. It was clearly informed that MCH will pay compensation to the effected structures as per the Rules and extent all benefits as per the Rules. If landlord desires to avail the benefits to be extended by the MCH on his own volition the landlord may give consent. If the landlord is not willing the letter nowhere compels one to part with the land for widening the road in which event as rightly contended by the learned Standing Counsel the MCH will have to resort to the provisions of the Land Acquisition Act.

In similar circumstances, W.P.No.21341 of 2000 dated 7.11.2000 and W.P.No.22216 of 2000 dated 16.11.2000 were disposed of by me with direction to respondent –Corporation to take necessary action as per the Land Acquisition Act or the HMC Act, if the landlords are not willing to give their consent. I also directed that if the consent is already given by the landlord/owner, the MCH shall be at liberty to proceed with further action for widening the road. In view of the judgment of the Full Bench in M/s.Ushodaya Publications v. Commissioner, Municipal Corporation of Hyderabad, the MCH has to obtain consent even from the tenants without which the road widening work cannot be taken up unless MCH takes action for acquisition of land as per law. Needless to mention that unless proper procedure is contemplated and initiated, the MCH, in law, is not entitled to either forcibly take possession or demolish the structures in the area.

In view of the above, the writ petition is disposed of directing status quo as on today. If the property, in the petitioner's occupation, is required for any public purpose, it shall be open to the respondent-Corporation to give a notice to the petitioner and obtain consent for the same. If the petitioner is not willing to give consent, necessarily the Corporation has to take action in accordance with Section 147 of the Act, and cannot proceed any further, merely on the ground that the landlady has already given consent. No costs.

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(V.V.S.RAO, J)

20.12.2005

vs